80-1556

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CONTROLLER OF THE STATE OF CALIFORNIA AND
COUNTY TREASURER OF THE COUNTY OF LOS ANGELES,
Petitioners,

VS.

ATTORNEY GENERAL OF THE STATE OF TEXAS, *et al.*,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Appendix A

No. 79-2898.

United States Court of Appeals

FIFTH CIRCUIT.

OCT. 27, 1980.

WILLIAM RICE LUMMIS,
Texas Temporary Administrator
of the Estate of
Howard R. Hughes, Jr., Deceased,
Plaintiff-Appellant
Cross Appellee,

v.

MARK WHITE, BOB BULLOCK,
KENNETH CORY, H. B. ALVORD, et al.,
Defendants-Appellees.

KENNETH CORY, H. B. ALVORD,
Defendants-Appellees
Cross Appellants.

Appeals from the United States District Court for the Western District of Texas.

Before VANCE and SAM D. JOHNSON, Circuit Judges, and THOMAS, District Judge*.

VANCE, Circuit Judge:

* District Judge of the Southern District of Alabama, sitting by designation.

Howard Robard Hughes, Jr. died on April 5, 1976, leaving an estate that state taxing authorities estimate at $1.1 billion and the administrators estimate at $167 million.[1] Hughes' assets primarily consisted of the stock of Summa Corporation, a wholly-owned Delaware corporation. Administrators were appointed in each of the five states where the estate's property is located: Texas, California, Nevada, Delaware, and Louisiana.[2] The claimants include twenty-one heirs who have entered a settlement agreement, about 386 other alleged heirs who have appeared in various state administration proceedings, twelve law firms, two states, an alleged wife, and a medical institution. Numerous purported wills have been offered for probate.

Both Texas and California claim Hughes as a domiciliary and assert their rights to levy state death taxes on his estate.[3] The administrators, however, allege that Hughes was domiciled in Nevada, and it is not surprising that Nevada has no state inheritance taxes. If both Texas and California levy death taxes, the total of those taxes and the federal estate tax might

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* District Judge of the Southern District of Alabama, sitting by designation.

[1] The Internal Revenue Service estimated that the estate was worth approximately $465,000,000. The California inheritance tax referee valued the estate at $1,106,345.516. The administrators, by contract, asserted that its value was $166,800.000.

[2] The Texas court appointed William Rice Lummis and Annette Gano Lummis, Hughes' aunt and Lummis' mother, as temporary co-administrators. Annette Gano Lummis died and her powers vested in Lummis. In Delaware and Louisiana, Lummis was appointed administrator. Richard Gano was appointed administrator in California. The First National Bank of Nevada was originally appointed administrator in Nevada, but Lummis was subsequently named co-administrator.

[3] Each state seeks to tax the estate's tangible assets located within its borders and all of its intangible property.

> Tangible personal property and realty are constitutionally subject to taxation only at the place of situs. See *Union Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194 [26 S.Ct. 36, 50 L.Ed. 150]; *City Bank Farmers Trust Co. v. Schnader*, 293 U.S. 112 [55 S.Ct. 29, 79 L.Ed.228] . . . [I]ntangible personal property may, at least theoretically, be taxed only at the place of the owner's domicile. *First Nat. Bank v. Maine*, 284 U.S. 312 [52 S.Ct. 174, 76 L.Ed. 313]

California v. Texas, 437 U.S. at 602 n.1, 98 S.Ct. at 3108 n.1 (Stewart, J., concurring).

equal over 100 percent of Hughes' estate.[4] Because of this impossibility the administrators seek a binding determination of Hughes' domicile.

After an eleven-week trial, a jury in a Texas probate court rejected the "Mormon will," which had been offered for probate, and determined that Hughes was domiciled in Texas at the time of his death. Three days before the Texas trial began, California, seeking a determination that Hughes was not domiciled in Texas, petitioned the United States Supreme Court for leave to file a complaint against Texas under the Court's original jurisdiction. *See* U.S. Const. Art. III § 2, cl. 2; *Texas v. Florida*, 306 U.S. 398, 59 S.Ct. 563, 83 L.Ed. 817 (1939)(involving Hetty Green's fortune). In *California v. Texas*, 437 U.S. 601, 98 S.Ct. 3107, 57 L.Ed2d 464 (1978), however, the Court unanimously denied California's motion. In concurring opinions, four members of the Court suggested that the administrators might obtain a domicile determination binding on both Texas and California under the federal interpleader statute, 28 U.S.C. § 1335, because *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), had undermined the rationale of *Worcester County Trust Co. v. Riley*, 302 U.S. 292, 58 S.Ct. 185, 82 L.Ed. 268 (1937).

William Rice Lummis, the Texas temporary administrator, then filed this interpleader action under 28 U.S.C. §§ 1335 and 1397 in district court and named state and local taxing officials of California, state taxing officials of Texas, the California special administrator of the Hughes estate, and the Nevada administrators of the estate as defendants. The court realigned the defendant administrators with the plaintiff administrators because it found that they were working in unison toward a

[4] Lummis asserts that assuming Texas and the Internal Revenue Service will use the Internal Revenue Service valuation of the estate and that California will use its own valuation, *see* note 1 *supra*, the estate will be liable for $763,400,000 in estate taxes. This assertion is based on the supposition that the Internal Revenue Service will assess estate taxes at the applicable marginal rate of 77 percent minus 16 percent state death tax credit, that Texas will assess at the applicable rate of 16 percent, and that California will assess at its applicable rate of 24 percent.

common goal. *See City of Dawson v. Columbia Avenue Saving Fund, Safe Deposit, Title & Trust Co.*, 197 U.S. 178, 180-81, 25 S.Ct. 420, 421, 49 L.Ed. 713 (1905). It then dismissed the action because it found that the diversity requirement of section 1335 was not satisfied. Lummis now appeals the dismissal by the district court.

The Texas taxing officials assert that *Worcester County Trust Co.* bars Lummis' suit and that the parties to the suit do not fulfill the section 1335 diversity requirement. The California officials contend that the district court has jurisdiction to grant relief under section 1335 only if the asserted heirs are joined as parties-plaintiff and their citizenship is considered for purposes of diversity.[5] Although we find that the asserted heirs need not be joined, we conclude that the district court erred in denying Lummis the remedy of interpleader.

I

Interpleader enables a person holding a fund to compel persons asserting conflicting claims to that fund to adjudicate their rights to the fund in a single action. *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 534, 87 S.Ct. 1199, 1205, 18 L.Ed.2d 270 (1967); *Texas v. Florida*, 306 U.S. at 405-06, 59 S.Ct. at 567; F. James, *Civil Procedure* § 10.21 (1965); 3A *Moore's Federal Practice* ¶ 22.02[1], at 22-4 (2d ed. 1979). The remedy developed in equity and is governed by equitable principles. *Fulton v. Kaiser Steel Corp.*, 397 F.2d 580, 583 (5th Cir. 1968); *see Texas v. Florida*, 306 U.S. at 406-07, 59 S.Ct. at 567-568.[6]

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[5] The California taxing officials also argue that the district court erred in denying its motion to transfer venue to the District of Colorado under 28, U.S.C. § 1404(a). We find, however, that the court did not abuse its discretion in denying the transfer of venue motion. *See Marbury—Pattillo Constr. Co. v. Bayside Warehouse Co.*, 490 F.2d 155, 158 (5th Cir. 1974); *see generally Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947).

[6] Because the modern statutory remedy of section 1335 is equitable in origin and remedial in nature, courts must construe it liberally "so as not to result in injustice." *Austin v. Texas-Ohio Gas Co.*, 218 F.2d 739, 746 (5th Cir. 1955); *Aetna Cas. & Sur. Co v. Ahrens*, 414 F.Supp. 1235, 1254 (S.D. Tex. 1975).

The common law history of this remedy begins with detinue actions and continues with the equitable strict bill of interpleader. Under the traditional strict bill of interpleader, the stakeholder did not assert an interest in the fund or contest the extend of the liability. Hazard & Moskovitz, *An Historical and Critical Analysis of Interpleader*, 52 Calif.L.Rev. 706, 735-49 (1964); 3A *Moore's Federal Practice, supra* ¶ 22.03; 7 C. Wright & A. Miller, *Federal Practice and Procedure* § 1701 (1972); *see* 4 J. Pomeroy, *Equity Jurisprudence* § 1322 (5th ed. S. Symons 1941). The stakeholder simply brought the money or property into court and was discharged, leaving the rival claimants to litigate their entitlement to the fund. *See Texas v. Florida*, 306 U.S. at 406, 59 S.Ct. at 567; 3A *Moore's Federal Practice, supra* ¶ 22.02[1]. Because the strict bill of interpleader did not afford relief to all stakeholders, courts gradually developed the bill in the nature of interpleader. *Texas v. Florida*, 306 U.S. at 406, 59 S.Ct. at 567; Chafee, *Modernizing Interpleader*, 30 Yale L.J. 814, 839 (1921); Hazard & Moskovitz, *supra* at 745-47. Through a bill in the nature of interpleader, a stakeholder that asserted an interest in the fund or denied liability to one or more of the claimants called "upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims." *Texas v. Florida*, 306 U.S. at 406-07, 59 S.Ct. at 568. *Accord*, Hazard & Moskovitz, *supra* at 745, 747; *see generally* D. Louisell & G. Hazard, *Pleading and Procedure* 760-64 (3d ed. 1973); A. Scott & R. Kent, *Civil Procedure* 917-18 (2d rev. ed. 1967). Both remedies, strict bills of interpleader and bills in the nature of interpleader, were embodied in the Federal Interpleader Act of 1936, 28 U.S.C. § 1335,[7] and in the form of

[7] Other parts of this Act were codified at 28 U.S.C. §§ 1397, 2361. Section 1335 provides,

> (a) The district courts shall have original jurisdiction of any civil action of interpleader or in the nature of interpleader filed by any person, firm, or corporation, association, or society having in his or its custody or possession money or property of the value of $500 or more, or having issued a note, bond, certificate, policy of insurance, or other instrument of value or amount of $500 or more, or providing for the delivery or payment or the loan of money or Property of such amount or value, or being under any obligation written or unwritten to the amount of $500 or more, if

(Footnote continued on following page)

interpleader provided in 1938 by Rule 22(1) of the Federal Rules of Civil Procedure. *Haynes v. Felder*, 239 F.2d 868, 871 (5th Cir. 1957); 3A *Moore's Federal Practice, supra* ¶ 22.07, at 22-47; 7 C. Wright & A. Miller, *supra* § 1701, at 357, 360.[8]

Presently there are two types of interpleader in federal courts: statutory interpleader under section 1335 and traditional equitable interpleader governed by Rule 22. *See generally* F. James, *supra* at 513-14; C. Wright, *The Law of Federal Courts* 362-63, 365-66 (3d ed. 1976). The salient difference is that section 1335 interpleader enjoys more liberal procedural rules: the statute reduces the jurisdictional amount to $500, requires only minimal diversity among the claimants, authorizes venue in any district where any claimant resides, and affords nationwide service of process. 28 U.S.C. §§ 1335, 1397, 2361. By contrast, Rule 22 interpleader falls under the usual rules for civil actions: a jurisdictional amount of $10,000, complete diversity between the stakeholder and the claimants (unless there is a federal question), venue where all plaintiffs or all defendants reside or where the claim arose, and statewide service of process. *id.* §§ 1332(a)(1), 1391(a); Fed.R.Civ.P. 4. *See generally* M. Green, *Basic Civil Procedure* 92-93 (2d ed. 1979).

(Footnote continued from previous page)

(1) Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy or other instrument, or arising by Virtue of any such obligation; and if (2) the plaintiff has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy.

(b) Such an action may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

[8] *See* Chafee, *The Federal Interpleader Act of 1936: I*, 45 Yale L.J. 963, 970-71 (1936); S.Rep. No. 558, 74th Cong., 1st Sess. 1, 4-5 (1935).

Lummis' action, brought under section 1335, is a bill in the nature of interpleader to determine Hughes' domicile at the time of his death. *California v. Texas*, 437 U.S. at 610-11, 98 S.Ct. at 3113 (Stewart, J., concurring); *cf. Texas v. Florida*, 306 U.S. at 401, 59 S.Ct. at 565. As administrator of Hughes' estate, Lummis disputes the extent of the estate's liability to the taxing authorities of Texas and California, asserting that Hughes was domiciled in Nevada when he died. Through the equitable remedy of statutory interpleader, Lummis and the other administrators joined with him as plaintiffs seek "to require litigation of the inconsistent tax claims in a single forum in order to avert the risk of loss to the *estate* that would result from separate adjudications." *California v. Texas*, 437 U.S. at 611, 98 S.Ct. at 3113 (Stewart, J., concurring) (emphasis in original).

II

In *Worcester County Trust Co. v. Riley*, 302 U.S. 292, 58 S.Ct. 185, 82 L.Ed. 268 (1937), as in this case, the executor of an estate threatened with the assessment and collection of death taxes by two states brought a section 1335 action for a determination of the decedent's domicile. The Supreme Court, however, found that the suit was actually a suit against the state, and thus that it was barred by the eleventh amendment.[9] *Id.* at 300, 58 S.Ct. at 188.

In his concurring opinion in *California v. Texas*, Justice Stewart, joined by Justice Powell and Justice Stevens, observed that "this holding has been substantially undercut by subsequent developments." 437 U.S. at 608 n.10, 98 S.Ct. at 3112 n.10. Justice Powell, concurring separately in the same case, emphasized that

> in light of *Edelman v. Jordan*, 415 U.S. 651, [94 S.Ct. 1347, 39 L.Ed.2d 662] (1974), this Court's decision in *Worcester County Trust Co. v. Riley*, 302 U.S. 292, [58

[9] The eleventh amendment limits judicial power as follows:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one on the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

> S.Ct. 185, 82 L.Ed. 268] (1937), no longer can be regarded as a bar against the use of federal interpleader by estates threatened with double death taxation because of possible inconsistent adjudications of domicile.

Id. at 615, 98 S.Ct. at 3116. Justice Brennan, also concurring, quoted Justice Powell's statement with approval. *Id.* at 601, 98 S.Ct. at 3108. In the absence of any opposing view, this court should not ignore the guidance provided by four members of the Supreme Court.

Worcester County Trust Co. was based on the view that the eleventh amendment barred all suits in which plaintiffs sought to restrain or to compel the action of state officials performing official duties imposed by constitutional state laws. 302 U.S. at 296-300, 58 S.Ct. at 186-188. Thirty-seven years later, the Court in *Edelman* clarified

> that the Eleventh Amendment bars only suits "by private parties seeking to impose a liability which must be paid from public funds in the state treasury," [*Edelman v. Jordan,*] 415 U.S., at 663 [94 S.Ct., at 1356] and not actions which may have "fiscal consequences to state treasuries . . . [that are] the necessary result of compliance with decrees which by their terms [are] prospective in nature," *id.*, at 667-668 [94 S.Ct., at 1357-1358] at least in a case such as this, where the very controversy is a result of our federal system. An interpleader action to prevent competing States' taxing officials from levying death taxes on the basis of possible inconsistent adjudications of domicile unquestionably would fall into the latter category.

California v. Texas, 437 U.S. at 616, 98 S.Ct. at 3116 (Powell, J., concurring). Because Lummis requests only prospective, equitable relief the eleventh amendment does not preclude his suit. *See generally Milliken v. Bradley*, 433 U.S. 267, 289-90, 97 S.Ct. 2749, 2761-62, 53 L.Ed.2d 745 (1977); *Gay Student Services v. Texas A & M University*, 612 F.2d 160, 164-65 (5th Cir. 1980).[10]

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[10] Although the district court acknowledged that "the Eleventh Amendment bar may have been removed by *Edelman*," nevertheless it found that "the *Worcester* court's finding that the acts of the state taxing officials were not unconstitutional" precluded Lummis' suit.

III

The federal interpleader statute was enacted under the authority of the Constitution in article III, section 2, clause 1, which grants federal courts original jurisdiction over civil cases that arise between citizens of different states. *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 71-72, 60 S.Ct. 44, 47, 84 L.Ed. 85 (1939). To enable a federal court to have jurisdiction over an action, therefore, section 1335 requires that "Two or more adverse claimants, of diverse citizenship as defined in section 1332 of this title, are claiming or may claim to be entitled to [the] money or property." 28 U.S.C. § 1335(a)(1). In *State Farm Fire & Casualty Co. v. Tashire*, 386 U.S. 523, 87 S.Ct. 1199, 18 L.Ed.2d 270, (1967), the Supreme Court interpreted this provision "to require only 'minimal diversity,' that is, diversity of citizenship between two or more claimants." *Id.* at 530, 87 S.Ct. at 1203. *Accord, Haynes v. Felder*, 239 F.2d at 871; *see* J. Cound, J. Friedenthal & A. Miller, *Civil Procedure* 627-28 (2d ed. 1974).

The district court found that the parties in this case lack minimal diversity and dismissed the action for want of jurisdiction. It concedes that Alvord, the acting county treasurer for Los Angeles County, was a citizen of California for diversity purposes, citing *Moor v. County of Alameda*, 411 U.S. 693, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973), *overruled on other grounds, Monell v. Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). The district court, however, summarily concluded that the administrators "are certainly not claimants for the purpose of this statutory interpleader action." It then reasoned that the state of Texas rather than the named state taxing officials was the real party in interest in the action, *see Craig v. Southern Natural Gas Co.*, 125 F.2d 66, 67 (5th Cir. 1942), and that a state is not a citizen of itself for diversity purposes, *Postal Telegraph Cable Co. v. Alabama*, 155 U.S. 482, 487, 15 S.Ct. 192, 194, 39 L.Ed. 231 (1894). Because the United States is also not a state citizen for purposes of diversity, *Kent v. Northern California Regional Office*, 497 F.2d 1325, 1327 (9th Cir. 1974); 3A *Moore's Federal Practice, supra* ¶ 22.09[3], at 22-77, under the district court's analysis, absolutely no diversity exists among the parties. This conclusion

provides little consolation to Lummis and the other administrators who are charged in their letters of administration with preserving and protecting the estate's assets, but are confronted with the complete depletion of the estate that may result from the collection of domicile-based death taxes by two different states. The incongruity of such a result is manifest in a case in which scores of interested persons spread over the entire western United States and at least three different sets of government taxing authorities are vying over an enormous sum of money.

The controversy in this case is "between each State and the decedent's estate as to the legal obligation to pay death taxes." *California v. Texas*, 437 U.S. at 611, 98 S.Ct. at 3113 (Stewart, J., concurring). The action is a bill in the nature of interpleader, not a strict bill of interpleader. *Id.* at 610-11, 98 S.Ct. at 3113. Lummis claims an interest in protecting the assets of the Hughes estate from double death tax liability, and asserts that Hughes was domiciled in Nevada, which has no state death tax. Because of his legal duty of preserving the estate's assets, Lummis is an interested stakeholder, not a disinterested one.[11]

This circuit has not decided whether the citizenship of an interested stakeholder may be considered for purposes of establishing the minimal diversity required by section 1335. *Boston Old Colony Insurance Co. v. Balbin*, 591 F.2d 1040, 1042 n.5 (5th Cir. 1979). In the *Treinies* decision in 1939, the Supreme Court held that the citizenship of a stakeholder who did not claim any interest in the deposited fund did not destroy diversity for a strict bill of interpleader although the stakeholder and one of the claimants were citizens of the same state. 308 U.S. at 71-72, 60 S.Ct. at 47. The Court did not discuss whether the citizenship of an interested stakeholder similarly is irrelevant for purposes of diversity. A stakeholder who brings a

[11] In addition, the result of our decision is that the district court will determine Hughes' domicile at death, which will resolve where his intangible property will be administered. In turn, that will determine which administrators will and which will not receive the statutory fee for administering Hughes' intangible property. That fee may well amount to tens of millions of dollars. Because this lawsuit will influence their entitlement to that administration fee, the various administrators are interested parties.

bill in the nature of interpleader asserts a claim to the fund that is adverse to that of the defendant claimants. Because section 1335 requires only that two or more adverse claimants be of diverse citizenship, we hold that the citizenship of an interested stakeholder may be considered for purposes of establishing diversity under section 1335. *Accord, Builders & Developers Corp. v. Manassas Iron & Steel Co.*, 208 F.Supp. 485, 488 (D.Md.1962); *see Pan American Fire & Casualty Co. v. Revere*, 188 F.Supp. 474, 477 & n.8 (E.D.La.1960).[12]

Section 1335 provides that the adverse claimants must be "of diverse citizenship as defined in [28 U.S.C.] section 1332." Under section 1332's diversity rules, as long as the administrator was not named solely for the purpose of creating diversity, *Green v. Hale*, 433 F.2d 324, 326-31 (5th Cir. 1970), the citizenship of the administrator, rather than that of the decedent or the heirs, controls the question whether the federal court has diversity jurisdiction. *Bush v. Carpenter Brothers, Inc.*, 447 F.2d 707, 710-11 (5th Cir. 1971); *Harris v. Johnson*, 345 F.Supp. 516, 517 (N.D.Miss.1972). As Hughes' first cousin and one of his prospective heirs, Lummis clearly has more than a nominal interest in the administration of his estate. Therefore, he clearly was not chosen to be the administrator collusively or "joined to invoke the jurisdiction of [the district] court." 28 U.S.C. § 1359. Because the pleadings indicate that Lummis is a citizen of Nevada, he is a claimant whose citizenship is diverse from that of an adverse claimant, Alvord, the acting county treasurer for Los Angeles County and a

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[12] Professors Wright and Miller note,

> The declining importance of the classic limitations on interpleader and the acceptance of jurisdiction based on minimal diversity under the statute are evidence of a trend toward the broadest availability of interpleader relief that has been underway since the adoption of the federal rules. Allowing statutory interpleader [when the defendant claimants are citizens of the same state, but an interested stakeholder is diverse,] would be consistent with that trend.

7 C. Wright & A. Miller, *supra* § 1710, at 406 (footnote omitted). *But see* 3A *Moore's Federal Practice, supra* ¶ 22.09[1].

citizen of California. This satisfies the diversity requirement of section 1335.[13]

The California taxing officials argue that the district court erred in failing to join Hughes' prospective heirs as parties under Rule 19 of the Federal Rules of Civil Procedure. Rule 17, however, provides that "[e]very action shall be prosecuted in the name of the real party in interest," and that an "executor, [or] administrator . . . may sue in his own name without joining with him the party for whose benefit the action is brought." Fed.R.Civ.P. 17(a). In performing his duty of preserving the assets of the estate imposed by Texas law, *see* Tex.Prob.Code Ann. §§ 231-33 (Vernon 1980), Lummis is the real party in interest, and the prospective heirs need not be joined. *See Proctor v. Gissendaner*, 579 F.2d 876, 880 (5th Cir. 1978).

IV

In this case we must decide whether the federal system that has spawned Lummis' dilemma of double taxation provides him with a remedy. *California v. Texas*, 437 U.S. at 616, 98 S.Ct. at 3116 (Powell, J., concurring) (quoting Chafee, *Federal Interpleader Since the Act of 1936*, 49 Yale L.J. 377, 388 (1940)). We hold that it does.

Under the common law of Texas as well as that of California, a decedent has only one domicile for death tax purposes. *California v. Texas*, 437 U.S. at 603, 98 S.Ct. at 3109 (Stewart, J., concurring); *see Texas v. Florida*, 306 U.S. at 408, 59 S.Ct. at 568. Because "neither Texas nor California is or will become a party to the proceedings in the other's courts, neither will be bound by an adverse determination of domicile in the

[13] The only administrator whose citizenship differs from that of Lummis is Richard Gano, the California administrator. Because only minimal diversity is required, we find that Gano's California citizenship will not deprive the district court of jurisdiction under section 1335. *See State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. at 530, 87 S.Ct. at 1203.

other's forum." *Id.*, 98 S.Ct. at 3109. Lummis seeks only a determination that will bind both sets of taxing officials[14] and will thus preserve the estate's assets from either total or near-total depletion. Such a determination, rather than impeding the states in enforcing their laws, would effectively implement their rules that death taxes may be imposed only by a state in which a decedent is domiciled at his death and that a decedent may have only one domicile. The equitable bill in the nature of interpleader, codified in section 1335, enables Lummis to obtain a binding domicile determination from a federal tribunal. We hold that the district court has jurisdiction over Lummis' suit; thus we reverse its dismissal order.

REVERSED AND REMANDED

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[14] Lummis also seeks a declaration of Hughes' domicile for federal estate tax purposes. The United States, however, asserts that such a declaration is barred by 28 U.S.C. § 2201. Section 2201 enables federal courts to "declare the rights and other legal relations of any interested parts" in actual controversies within its jurisdiction "except with respect to Federal taxes." *See California v. Texas*, 437 U.S. at 609 n.10 98 S.Ct. at 3112 n.10 (Stewart, J., concurring). The district court's determination that it lacked diversity jurisdiction caused it to dismiss the case as to all parties and claims, and it did not reach the United States' contentions. Generally, "a reviewing court should remand a case to the district court for consideration of a question not previously considered there . . ." *Boire v. Miami Herald Publishing Co.*, 343 F.2d 17, 25 (5th Cir.), *cert. denied*, 382 U.S. 824, 86 S.Ct. 56, 15 L.Ed.2d 70 (1965). *Accord, Connolly v. Pension Benefit Guaranty Corp.*, 581 F.2d 729, 734-35 (9th Cir. 1978) *cert. denied*, 440 U.S. 935, 99 S.Ct. 1278, 59 L.Ed2d 492 (1979). We therefore decline to consider this issue until the district court has decided it on remand.

Appendix B

United States Court of Appeals

FIFTH CIRCUIT

Gilbert F. Ganucheau
Clerk

Office of the Clerk

Tel 504-589-6514
600 Camp Street
New Orleans, LA. 70130

December 12, 1980

TO ALL PARTIES LISTED BELOW:

No. 79-2898 WILLIAM RICE LUMMIS, etc.

vs.

MARK WHITE, et al.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By .....BRENDA HAUCK.....
Deputy Clerk

cc: ALL COUNSEL OF RECORD

Appendix C

U.S. COURT OF APPEALS
FILED
JAN 23 - 1981
GILBERT F. GANUCHEAU, Clc

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 79-2898

WILLIAM RICE LUMMIS,
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of the Estate of
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Defendants-Appellees
KENNETH CORY, H.B. ALVORD,
Defendants-Appellees
Cross Appellants.

Appeals from the United States
District Court for the
Western District of Texas

ORDER:

IT IS ORDERED that appellees and cross appellants, Kenneth Cory and H. B. Alvord's motion for leave to file a second petition for rehearing out of time is DENIED.

Appendix D

FILED
JUL 27 - 1979
CHARLES W. VAGNER, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

WILLIAM RICE LUMMIS and ANNETTE GANO LUMMIS v. MARK WHITE, *et al*	CIVIL ACTION NO. A-78-CA-148

ORDER

On July 10, 1979, oral arguments were heard on the Motions to Dismiss of Defendants Cory and Alvord (hereinafter referred to as the "California Defendants" or "California") and Defendants White and Bullock (hereinafter referred to as the "Texas Defendants" or "Texas"). After careful consideration of the briefs and the arguments of counsel, the Court is of the opinion that the Motions to Dismiss are meritorious and should be granted.

In the way of background suffice it to say that the present action was brought after the State of California petitioned the United States Supreme Court for leave to file a complaint seeking to invoke that court's original jurisdiction. In June of 1978, a unanimous court denied California's motion. *California v. Texas*, 437 U.S. 801 (1978). In concurring opinions four members of the court suggested that the Hughes estate might obtain a judgment under the Federal Interpleader Statute (28 U.S.C. § 1335) that would be binding on both Texas and California and thereby avoid the possibility of conflicting state

court determinations of domicile and death tax liability. Shortly after this opinion the Texas Administrators of the Hughes estate filed the present interpleader action.

After considering the briefs and arguments of able counsel the court is persuaded the interpleader action should be dismissed as this court is without subject matter jurisdiction over the statutory interpleader claim. The Statutory Interpleader Act, 28 U.S.C. § 1335, provides in pertinent part:

> "The District Court shall have original jurisdiction of any civil action . . . in the nature of interpleader filed by any person having in his . . . custody or possession money or property of the value of $500.00 or more . . . if . . . [t]wo or more adverse claimants, of diverse citizenship as defined in Section 1332 of this title, are claiming or may claim to be entitled to such money or property . . ."

It is the position of the Texas and California Defendants that the Plaintiffs' action does not involve two or more adverse claimants of diverse citizenship as the statute requires. We agree.

By the terms of the statute a claimant must be both adverse and claiming or may claim to be entitled to the money or property in the custody of the stakeholder. The court is of the view that of the parties named by the Plaintiffs in this action, only the United States and the California and Texas taxing officials are claimants under the interpleader statute.

The adverseness in this instance is among the various taxing authorities for they are the only parties "claiming or [who] may claim to be entitled to such money or property" held by the stakeholder. The Plaintiffs argue that the Administrators of the Hughes estate in Nevada and other states are claimants, but it is clear that none of the Administrators have a claim against the money or property in the custody or possession of the plaintiff stakeholder; accordingly none meets the requirement for a claimant. *See Fulton v. Kaiser Steel Corporation*, 397 F.2d 580 (5th Cir. 1968).

The court also notes that the Texas Administrators, the Plaintiffs in this action, and the Administrators of the Hughes estate in other states, named Defendants in the present cause, have the same ultimate interest in the outcome of this litigation. At the hearing on the motions to dismiss Mr. William Rice Lummis, the Texas Administrator and Plaintiff in this matter, admitted during cross-examination that the Plaintiff Administrators and the Defendant Administrators were working in unison toward a common goal. As Professor Wright noted, "[i]t is the court's duty to 'look beyond the pleadings, and arrange the parties according to their sides in the dispute.'" Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3607 citing *City of Dawson v. Columbia Trust Company*, 197 U.S. 178 (1905). The court thus feels that in aligning parties according to their interests it is duty bound to realign the named Defendant Administrators of the Hughes estate with the Plaintiff Administrators. As Plaintiff Administrators, the Administrators of the Hughes estate from the states of Nevada, Delaware, Louisiana, and California are certainly not claimants for the purpose of this statutory interpleader action.

With the United States and the Texas and California taxing officials identified as claimants in this cause, the court now turns its attention to the question of diverse citizenship that the statute requires of the claimants. The Federal Interpleader Act, 28 U.S.C. § 1335, refers to "adverse claimants, of diverse citizenship as defined in Section 1332 of this title." Section 1332 of Title 28, United States Code, provides in pertinent part:

> "The district courts shall have original jurisdiction of all civil actions . . . between . . . citizens of different States . . ."

There is no question that the United States is not a "citizen of a state" for diversity purposes. *Kent v. Northern California Regional Office of American Friends Service Committee*, 497 F.2d 1325 (9th Cir. 1974). Likewise, there is no question that Defendant H.B. Alvord, the acting County Treasurer for the County of Los Angeles, California is a citizen of the state of California for diversity purposes. *Moor v. County of Alameda*, 411 U.S. 693 (1973). The Court need not consider whether Defendant Kenneth Cory, the acting Controller of the state of

California, is a citizen of that state for diversity purposes as such a finding would not add a "diverse citizenship" to that of Mr. Alvord's.

In determining the citizenship of parties for diversity purposes, the court looks not to the named parties in the complaint, but to the real parties in interest in the litigation. "The general rule is that the citizenship of the real party in interest is determinative in deciding whether diversity jurisdiction exists; the presence of a nominal or formal party is irrelevant for purposes of measuring the court's subject matter jurisdiction." Wright & Miller, Federal Practice and Procedure: Civil § 1556. Were this not the case, parties could circumvent the limits on federal jurisdiction by creating or destroying jurisdiction by merely adding nominal parties to an action.

This principle has been applied in the context of actions by or against state officers or officials where the real party in interest is the state. The Defendants cite the case of *Craig v. Southern Natural Gas Co.*, 125 F.2d 66 (5th Cir. 1942), for the proposition that a suit against a state taxing official, growing out of his official duties as a collection agent for the state, is a suit against the state. We agree and find the existence of a similar situation here. The authority by which the Texas Attorney General (White) and the Texas Comptroller (Bullock) act for the state is well documented. *See* TEX. TAX-GEN. ANN. arts. 1.032, 1.032A, 1.10, 14.01, 14.13-14.22; and TEX. REV. CIV. STAT. ANN. arts. 4396 and 4407. As it is clear that the Texas Attorney General and Comptroller act not as individuals, but as agents of the state, and the state is the sole beneficiary of those actions, we find those parties to be purely nominal parties in this action with the state being the real party in interest.

It has long been held that a state is not a citizen of itself for federal diversity purposes. *Postal Telegraph Cable Co. v. Alabama*, 155 U.S. 482 (1894). Thus, the inclusion of the nominal parties White and Bullock does not provide a "claimant of diverse citizenship." After examining all of the "adverse claimants" the court finds that only one has a citizenship for federal diversity purposes. While only minimal diversity is

required under 28 U.S.C. § 1335 [*State Farm Fire and Casualty Co. v. Tashire*, 386 U.S. 523 (1967)], the statute does require that at least two claimants be of diverse citizenship as defined in 28 U.S.C. § 1332. Here as in *Kent v. Northern California Regional Office of American Friends Service Committee*, 497 F.2d 1325 (9th Cir. 1974), "the requisite diversity is lacking." *Id.* at 1327. Accordingly, the interpleader claim should be dismissed.

The Plaintiffs seek to avoid this result by claiming in their First Amended Complaint that the state taxing officials are acting unconstitutionally. They claim that such action brings those officials under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908) where it was held that a suit against a state official alleged to be acting unconstitutionally is not a suit against the state for purposes of the Eleventh Amendment. The Plaintiffs argue that by analogy the court should look to the individual defendant rather than the state in determining the citizenship for federal diversity purposes. The validity of the analogy is a moot point for it is clear that the actions complained of are not unconstitutional.

The Plaintiffs' claim that the threatened collection of a death tax by more than one state constitutes a deprivation of property without due process of law and a denial of equal protection of the laws was considered by the Supreme Court in *Worcester County Trust Co. v. Riley*, 302 U.S. 292 (1937). In a case strikingly similar to the present action, the court held that the constitution did not forestall the possibility of conflicts of decisions of the courts of two states. *Id.* at 298. Plaintiffs seek to avoid that precedent by referring to the concurring opinions in *California v. Texas*, 437 U.S. 801 (1978) where a minority of the court intimated that an interpleader action like that in *Worcester County* would no longer be barred by the Eleventh Amendment. This court finds that the fact that the Eleventh Amendment bar may have been removed by *Edelman v. Jordan*, 415 U.S. 651 (1974), has nothing to do with the continuing validity of the *Worcester* court's finding that the acts of the state taxing officials were not unconstitutional. Indeed, Justice Stewart, author of the principal concurring opinion in

California v. Texas, specifically noted that "there is no constitutional impediment to both California and Texas imposing death taxes upon the Hughes estate by proceedings in their own Courts." *California v. Texas*, 46 U.S.L.W. at 4798 n.13 (Stewart, J., concurring).

The Plaintiffs having failed to establish jurisdiction for their statutory interpleader claim, the court now turns to the additional claims the Plaintiffs raised in their First Amended Complaint. In Counts II and III of the complaint the Plaintiffs attempt to establish this court's jurisdiction independent of the interpleader statute. Count II alleges that jurisdiction exists under 28 U.S.C. § 1331, the federal question statute, as the state taxing authorities of Texas and California are violating Plaintiffs' rights because the state court proceeding in neither state can protect the estate from being found liable for death taxes in other states.

This argument warrants little attention. Justice Stone, writing for a unanimous court in *Worcester County Trust Co. v. Riley*, 302 U.S. 292 (1937), noted:

> "Neither the Fourteenth Amendment nor the full faith and credit clause requires uniformity in the decisions of the courts of different states as to the place of domicil, where the exertion of state power is dependent upon domicil within its boundaries. Hence it cannot be said that the threatened action of respondents involves any breach of state law or of the laws or Constitution of the United States." (citations omitted).

As previously noted, Justice Stewart in his concurring opinion in *California v. Texas, supra*, pointed out that there was no constitutional impediment to the actions the Plaintiffs complain of. Accordingly, this claim must be dismissed for failure to state a claim upon which relief can be granted.

In Count III of the complaint Plaintiffs allege that the Defendant taxing officials are in violation of the provisions of 42 U.S.C. § 1983. Although some of the claims raised in this Count are quite imaginative, the court is not persuaded by any of these claims. After careful consideration of each point the

court is of the opinion that this count of the complaint should be dismissed as the claims fail to state a claim upon which relief can be granted, or the Plaintiffs are not the proper parties to advance them, or the claims do not present a constitutionally ripe case or controversy.

Having examined the additional grounds raised by the Texas and California Defendants in their Motions to Dismiss and finding them unpersuasive, the court is of the opinion that this action should be dismissed for the reasons set out above.

In closing, the court wishes to note that it is not unsympath[et]ic to the potential plight of the Plaintiffs in this action; however, it is incumbent upon this court, and indeed any federal court, that scrupulously confine its own jurisdiction to the precise limits which a federal statute has defined. *Victory Carriers, Inc. v. Law*, 404 U.S. 202 (1971). It is accordingly

ORDERED, ADJUDGED AND DECREED that the Motions to Dismiss of the California Defendants and the Texas Defendants be, and hereby are, GRANTED.

Entered this 27th day of July, 1979, at Austin, Texas.

JACK ROBERTS

United States District Judge

Appendix E

FILED
AUG 8 - 1979
CHARLES W. VAGNER, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

WILLIAM RICE LUMMIS, et al.

v.

MARK WHITE, et al.

CIVIL ACTION
NO. A-78-CA-148

ORDER

This Court's Order of December 4, 1978, on the Motion of Defendants Cory and Alvord to Add Defendants is hereby withdrawn and the following Order is substituted in its stead.

On November 21, 1978, this Court held a hearing on Defendants Cory and Alvord's Motion to Add Defendants. After careful consideration of the arguments and brief relative to this motion, the Court is of the opinion that Defendants Cory and Alvord's Motion to Add Defendants is without merit, and should be denied.

This suit to determine the domicile of the late Howard Hughes is brought as a statutory interpleader action under 28 U.S.C. § 1335. In *California v. Texas*, ____U.S.____, 46 U.S.L.W. 4795 (June 22, 1978), four members of the Supreme Court suggested such an action as a means of reaching a single, binding determination of the decedent's domicile. The administrators of the Hughes Estate brought the present action in order to reach such a binding determination, and thereby avoid

the possibility of estate taxation by more than one state. Defendants Cory and Alvord (Movants) contend that in order to reach such a binding determination a group of 22 persons, who hold themselves out as the only known heirs of Mr. Hughes, need be joined as Defendants in this action. This Court, indeed all parties to this action, share the Movants' concern with reaching a just, single, and binding resolution of this matter, however, the Court's examination of pertinent authority does not point toward joining this group of heirs as a means to that end.

The Movants claim this group of heirs must be joined as persons needed for the just adjudication of this matter pursuant to Rule 19 of the Federal Rules of Civil Procedure. Rule 19 provides in pertinent part:

> "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. . . ."

It is the opinion of this Court that Rule 17 of the Federal Rules of Civil Procedure provides better guidance for the resolution of this matter. Rule 17 provides in pertinent part:

> "Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee. . . or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. . . ."

It is the substantive law of the state where the federal court sits that determines the authority of an administrator to act as

the real party in interest. *Boeing Airplane Company v. Perry*, 322 F. 2d 589 (10th Cir. 1963). It is clear that under the Texas law the administrator is authorized to act on behalf of the heirs in this matter. *See* TEX. REV. CIV. STAT., art. 1981, and TEXAS PROBATE CODE §§ 231-233.

The wisdom and common sense behind Rule 17 is especially evident in a situation such as this where an action need be taken to protect the assets of the Estate, but there has yet to be a determination of heirship (or even that Mr. Hughes died intestate).

The fears that the heirs would not be bound by the actions of the administrator would seem to be laid to rest by the Advisory Committee Note to the 1966 Amendment to Rule 17 which pointed out:

> "[T]he modern function of the rule in its negative aspect is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata."

The relationship between Rule 17 and Rule 19 has been set out by Professor Moore as follows:

> "Rule 17(a) deals in terms with joinder in the case of fiduciaries, providing that an executor, administrator, guardian, bailee, . . . or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. The party for whose benefit the action is brought normally is not, then, a person to be joined if feasible under Rule 19, though they may be if the interest of the fiduciary or representative are antagonistic to those of the parties represented."

3A Moore's Federal Practice ¶ 19.01-1[5-2].

It is very clear that the present case does not fall within the exception Professor Moore noted. Here the interests of the Administrators and the heirs are exactly the same. The Administrator brought this action in order to avoid double

taxation of the estate, and to preserve as much of the estate as possible for distribution. No argument can be made that the interests of the heirs and that of the Administrator are antagonistic in this suit. Indeed here, the Administrator is also an heir.

Movants cite as dispositive precedent for the applicability of Rule 19 the cases *Bry-Man's, Inc. v. Stute*, 312 F.2d 585 (5th Cir. 1963) and *Gottlieb v. Vaicek*, 69 F.R.D. 672 (N.D. 111. 1975). The Court notes that neither of these cases are Rule 17 cases, and if they were, they would fall within the exception Professor Moore noted. In both of these cases a party in privity with another party was required to be joined, but in both instances the person already a party to the suit was found to be incapable of representing the interest of the non-party with whom they were in privity. As previously noted, such is not the case here.

Additional evidence of the binding nature of the present action is found in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974). There the Supreme Court noted:

> "And while the general rule is that nonparties to the first action are not bound by a judgment or resulting determination of issues, several exceptions exist. The pertinent exception here is that nonparties may be collaterally estopped from relitigating issues necessarily decided in a suit brought by a party who acts as a fiduciary representative for the beneficial interest of the nonparties."

In the recent case of *Southwest Airlines v. Texas International Airlines*, 546 F.2d 84 (5th Cir. 1977), the Fifth Circuit Court of Appeals provides an excellent discussion of instances where federal courts have repeatedly held that judgments can bind persons not party to the litigation in question. The court first notes that at common law this preclusive effect extended only to those in privity with the parties. The court then explains that the term "privity" is a legal conclusion that reflects that the relationship between the party of record and the non-party is sufficiently close to afford application of the principle of preclusion. *Id.* at 95. The court finally lists several types of

relationships deemed to be "sufficiently close" to justify preclusion. Of interest here is the third instance the court cited. The present action falls under the heading, "federal courts will bind a non-party whose interests were represented adequately by a party in the original suit". *Id. Citing Heckman v. United States*, 224 U.S. 413 (1912) (United States represents the interest of American Indians), *Kerrison v. Stewart*, 93 U.S. 155 (1876) (trustee represents interests of beneficiaries), *Aerojet-General Corp. v. Askew*, 511 F.2d 710 (5th Cir. 1975) (state represents interests of home-rule county), and *Berman v. Denver Tramway Corp.*, 197 F.2d 946 (10th Cir. 1952) (local government represents interests of the public. The present cause clearly falls under this heading.

The Movants devoted considerable attention to the issue of where the liability attaches for the payment of the California inheritance tax. Movants contend that it falls on the heirs, and therefore they must be joined. The Court notes that under California law the Administrator is initially responsible for the payment of the tax, and is required to deduct any such tax due prior to distribution of estate assets to the beneficiaries. *See* CAL. REV. & TAX. CODE §§ 14101 and 14121 and CAL. PROB. CODE § 1024. *See also Cohn v. Cohn*, 123 P.2d 833, 835 (1942).

Under California law Mrs. Lummis is the sole intestate heir. Mrs. Lummis is a party to the present action, therefore there is no need to add the heirs as parties when the sole heir under California law is already a party to this suit.

The Movants argue that by signing the agreement with the 21 other heirs the Movants seed to add, Mrs. Lummis has made them liable for the payment of the inheritance tax. This is clearly not the case. Liability for the payment of the tax attaches on the death of the decedent, and parties may not later shift the liability by agreement. *Cohn v. Cohn*, 123 P. 2d 833, 835 (1942).

The Movants also claim that Mrs. Lummis would not be bound by a judgment rendered against her in her representative capacity, and would therefore be free to relitigate this matter. Movants cite Professor Moore for the proposition that "a person appearing in a representative capacity is not bound by a

judgment rendered against him as an individual". 1B MOORE'S FEDERAL PRACTICE ¶0.411 [1]. While this is a proper statement of the law, it is totally unrelated to the issue at hand. Here we are concerned with whether a judgment against a person in a representative capacity would be binding on that same person as an individual. It is clear that it would be binding on that individual as it would be on any other member of the group for which the person appeared as a representative.

Additionally, the Supreme Court of California has held that, "[w]here a party though appearing in two suits in different capacities is in fact litigating the same right, the judgment in one estops him in the other". *Bernhard v. Bank of America National Trust & Savings Association*, 122 P. 2d 892 (1942).

The Court notes in closing that there are various means available to insure that the matters in this suit are not relitigated. *See* 28 U.S.C. § 2283.

While the Court shares the Movants' concern for a final, binding adjudication, it is clear that with the present parties to this action this Court's judgment would bind the Administrators, the heirs, and the taxing authorities of Texas and California. No more is required.

Pursuant to 28 U.S.C. § 1292(b), this Court finds that the motion of Defendants Cory and Alvord and this Order involve a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal for this order may materially advance the ultimate termination of this litigation.

It is accordingly ORDERED, ADJUDGED AND DECREED that the Motion of Defendants Cory and Alvord to Add Defendants be, and hereby is, DENIED.

Entered this 8th day of August, 1979, at Austin, Texas.

JACK ROBERTS

United States District Judge

Appendix F

FILED
AUG 8 - 1979
CHARLES W. VAGNER, Clerk
By _____ Deputy

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

WILLIAM RICE LUMMIS, et al.

v.

MARK WHITE, et al.

CIVIL ACTION
NO. A-78-CA-148

ORDER

This Court's Order of December 4, 1978 on the Motion of Defendants Cory and Alvord to Change Venue is hereby withdrawn and the following Order is substituted in its stead.

On November 21, 1978, this Court held a hearing on the Motion of Defendants Cory and Alvord to Change Venue. After careful consideration of the arguments and briefs relative to this motion, the Court is of the opinion that the Motion of Defendants Cory and Alvord to Change Venue is without merit, and should be denied.

Defendants Cory and Alvord seek to have venue in this cause changed to the United States District Court for the District of Colorado, or in the alternative, to the Central District of California.

Change of venue is provided for in 28 U.S.C. § 1404, which provides in pertinent part:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The answer to where the present cause might have been brought is found in 28 U.S.C. § 1397. According to this provision:

> "Any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside."

This action was brought by the Texas Administrators of the Hughes Estate in an effort to protect against multiple estate taxation. In a companion motion, the taxing authorities of the state of California (Defendants Cory and Alvord) sought to add as Defendants a group of heirs of Howard Hughes, one of whom allegedly resides in Colorado. The Motion of Defendants Cory and Alvord to Add Defendants was denied by Court Order on November 27, 1978. As no claimant in this action resides in Colorado, Colorado is not a forum in which this action might have been brought, and accordingly, Colorado is not a forum to which a change of venue might be had.

In the alternative, Movants sought transfer of this cause to the Central District of California. In arguing that a change of venue to Colorado would be in the interest of justice, counsel for the Movants claimed that a Texas jury would have a pecuniary interest in the outcome, that regional pride might interfere with an objective verdict, and that there had been too much local publicity. Counsel for the Movants admitted in court that these same claims are not applicable to the State of California. Counsel in effect, if not in fact, has admitted the only factor to look to regarding a change of venue to California is the convenience of parties and witnesses.

Generally, the burden is on the moving party to justify the transfer, and the balance need usually be strongly in the movants favor. *See Wm. A. Smith Contracting Co., Inc., v. Travelers Indemnity Co.*, 467 F. 2d 662 (10th Cir. 1972). See

also *Vasquez v. Falcon Coach Co., Inc.*, 376 F. Supp. 815 (D.N.D. 1976). While it is clear that the California forum would be more convenient to the California Defendants and witnesses, it is equally clear that this forum is the more convenient for the Texas Defendants, the Administrator of the Estate, and the Texas witnesses. As transfer is not appropriate if it would merely shift the inconvenience from one party to another, the Movants have failed to justify the transfer of this cause. *See Hess Oil Virgin Islands Corporation v. UOP, Inc.*, 447 F. Supp. 381 (N.D. Okla. 1978) and *Residex Corporation v. Farrow*, 374 F. Supp. 715 (E.D. Penn. 1974).

Pursuant to 28 U.S.C. § 1292(b), this Court finds that the motion of Defendants Cory and Alvord and this Order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal for this order may materially advance the ultimate termination of this litigation.

It is accordingly ORDERED, ADJUDGED and DECREED that the Motion of Defendants Cory and Alvord to Add Defendants be, and hereby is, DENIED.

Entered this 8th day of August, 1979, at Austin, Texas.

JACK ROBERTS

United States District Judge

Appendix G

FILED
AUG 20 - 1979
CHARLES W. VAGNER, Clerk
By _____ Deputy

IN THE

UNITED STATES DISTRICT COURT

FOR THE
WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

WILLIAM RICE LUMMIS, Surviving Texas Temporary Administrator of the Estate of Howard R. Hughes, Jr., Deceased,

Plaintiff,

vs.

MARK WHITE, Attorney General of the State of Texas; BOB BULLOCK, Comptroller of Public Accounts of the State of Texas; KENNETH CORY, Controller of the State of California; H. B. ALVORD, County Treasurer for the County of Los Angeles; WILLIAM RICE LUMMIS and FIRST NATIONAL BANK OF NEVADA, Nevada Co-Special Administrators of the Estate of Howard R. Hughes, Jr., Deceased; WILLIAM RICE LUMMIS, Delaware Ancillary Administrator of the Estate of Howard R. Hughes, Jr., Deceased; WILLIAM RICE LUMMIS, Louisiana Provisional Administrator of the Estate of Howard R. Hughes, Jr., Deceased; RICHARD GANO, California General Administrator of the Estate of Howard R. Hughes, Jr., Deceased; and THE UNITED STATES OF AMERICA,

Defendants.

CIVIL ACTION
NO. A-78-CA-148

ORDER

This Court having concluded in its Order of July 27, 1979, that it did not have subject matter jurisdiction of this action,

It is ORDERED, ADJUDGED and DECREED that the above styled and numbered action is DISMISSED as to all parties and as to all claims and the Clerk is directed to enter a judgment conforming hereto.

DATED: August 20, 1979.

JACK ROBERTS

United States District Judge

Appendix H

JUDGMENT ON DECISION BY THE COURT

United States District Court

FOR THE
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

WILLIAM RICE LUMMIS, Surviving Texas Temporary Administrator of the Estate of Howard R. Hughes, Jr., Deceased vs. MARK WHITE, Attorney General, State of Texas, et al.	CIVIL ACTION FILE No. A-78-CA-148 **JUDGMENT**

This action came on for trial (hearing) before the Court, Honorable Jack Roberts, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the above styled and numbered action is DISMISSED as to all parties and as to all claims and final judgment is herewith entered.

Dated at Austin, Texas, this 20th day of August 1979.

CHARLES W. VAGNER
Clerk of Court

WANDA V. PETERSON
Wanda V. Peterson, *Deputy Clerk*

Appendix I

A. Before the passage of AB 2092 in 1980, Sections 14104, 14791 and 14793-95, of the California Revenue & Taxation Code read as follows:

California Revenue & Taxation Code § 14104:

§ 14104. Payment to county treasurer

Every tax imposed by this part shall be paid to the county treasurer as provided in this chapter.

California Revenue & Taxation Code § 14791:

§ 14791. Duty to receive payment of taxes, etc.

The treasurer of each county shall receive payment of all taxes and other money that may be due and payable under this part.

California Revenue & Taxation Code § 14793:

§ 14793. Payment to State Treasurer; time; statement

With the exception of such money as he may pay out from time to time pursuant to this part, the county treasurer shall pay to the State Treasurer all money received by him under this part within 15 days after the receipt of the money; provided that counties of less than 25,000 population may elect to make payments to the State Treasurer on a monthly basis, in which case, such payments shall be made to the State Treasurer within five days following the close of the monthly period. The county treasurer shall submit with the payment a statement in such form and containing such particulars, including the name of the estate, if any, from which the money was received, as the Controller shall prescribe.

California Revenue & Taxation Code § 14794:

§ 14794. Interest on money not paid to State Treasurer

On all money received by him under this part which he does not pay to the State Treasurer within the time prescribed by Section 14793, the county treasurer shall pay interest at the rate of 10 percent per annum.

California Revenue & Taxation Code § 14795

§ 14795. Commissions

(a) For services performed pursuant to this part, the county may retain out of the inheritance taxes paid to and accounted for by the county treasurer each fiscal year, commencing July 1 and ending June 30, commissions as follows:

If the collections are:	The commissions are:
Not over $250,000	2.5% of the collections
Over $250,000 but not over $1,000,000	$6,250 plus 1% of excess over $250,000
Over $1,000,000 but not over $2,000,000	$13,750 plus 0.5% of excess over $1,000,000
Over $2,000,000 but not over $8,000,000	$18,750 plus 0.4% of excess over $2,000,000
Over $8,000,000 but not over $100,000,000	$42,750 plus 0.16% of excess over $8,000,000
Over $100,000,000	$189,950 plus 0.1% over $100,000,000

(b) A county may retain an additional 20 percent of the commissions computed pursuant to subdivision (a), if such county contains:

(1) An area exceeding 10,000 square miles or,

(2) A population density of less than five per square mile at the time of the last regular federal census.

(c) A county qualifying under both paragraph (1) and paragraph (2) of subdivision (b) shall be entitled to only one 20-percent increment in commissions.

B. On January 1, 1981, Assembly Bill No. 2092 (Chapter 634 of the 1980 California Statutes) became effective. It reads in full as follows:

TAXATION—INHERITANCE AND GIFT TAXES

CHAPTER 634

ASSEMBLY BILL NO. 2092

An act to amend Sections 657, 1001, 1004, 1024, and 1174 of the Probate Code, and to amend Sections 13311, 13801, 13802, 13803, 13805, 14104, 14128, 14143.5, 14211, 14345, 14347, 14774, 15310, 15421, 15422 and 15423 of, to add Sections 13311.5, 14180, 14181, 14182, and 14902 to, and to repeal Sections 13314, 13551, 13552.5, 13554, 13554.5, 13555, 13556, 13556.5, 13557, 14141, 14142, 14143, 14144, 14342, 14343, 14344, 14346, 14791, 14792, 14793, 14794, 14795, and 14798 of, and to repeal Sections 15104.5, 15301, 15301.5, and 15303.5 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

Under California's existing Inheritance Tax Law, a death tax is imposed in the form of an inheritance tax measured by the share of a decedent's estate passing to each beneficiary, with the tax rates varying in accordance with the amount received by each such beneficiary and in accordance with such beneficiary's relationship to the decedent. Under existing law, procedures have been established for the determination and payment of such inheritance taxes.

This bill would revise such procedures, and would generally exempt all property transferred to a spouse from inheritance and gift taxes, and would increase the existing amounts which are exempt from these taxes.

The existing provisions of the Probate Code prohibit an order or decree distributing an estate unless all inheritance taxes have been paid or unless the State Controller has consented to the distribution.

This bill would repeal those provisions in the Probate Code prohibiting distribution unless the inheritance taxes have been paid.

This bill would appropriate $400,000 to the Controller for the purpose of administering the act.

This bill would take effect immediately as a tax levy and shall apply in the computation of inheritance and gift taxes with respect to the computation of gifts and death occurring on and after January 1, 1981.

The people of the State of California do enact as follows:

SECTION 1. Section 657 of the Probate Code is amended to read:

657.

(a) Upon the filing of a petition pursuant to Section 650, the court shall immediately appoint one inheritance tax referee who shall appraise the property described in the petition in the same manner provided in Section 605 and file an inheritance tax report or certification that no tax is due with the clerk of the court. Upon the filing of the inheritance tax report, the court shall enter an order fixing the inheritance tax in the same manner and subject to all other provisions of law relating to the administration of the estate of a decedent which is not subject to the provisions of this article. The filing of an inheritance tax report and the entry of an order fixing the inheritance tax under this article shall not limit the filing of additional reports and the entry of additional orders fixing the inheritance tax as to any other property of the deceased spouse giving rise to additional inheritance tax liability. * * *

(b) * * * The petitioner shall furnish the referee with a copy of the petition and all other necessary information and documentation as may be required by law for the referee to prepare the inheritance tax report or issue the certification that no tax is due with reference to the property described in the petition. Within 60 days after the receipt of the petition and information and documentation by the referee, as may be evidenced by an affidavit which is filed in the proceedings by the petitioner and served by mail on the referee, the referee shall make the appraisal and file the inheritance tax report or

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the certification that no tax is due with the clerk of the court. If the referee does not comply with the provisions of this subdivision, the court may issue any orders which may be necessary to effect compliance.

SEC. 1.3. Section 1001 of the Probate Code is amended to read:

1001.

If, at the hearing, it appears that all of the allegations of the petition are true, that the estate is but little indebted * * * and the legacy, devise or share of the estate or any portion thereof may be distributed without loss to the creditors or injury to the estate or any person interested therein, the court shall make an order requiring the executor or administrator to deliver the share, or shares, of the estate or such portion or portions thereof as the court may direct, to the person or persons entitled thereto, upon receiving from such person or persons a bond or bonds executed and payable to the executor or administrator, in such sum or sums as the court may designate, conditioned on the payment whenever required of the proportion of the debts due from the estate, not exceeding the amount of the legacy or portions of the estate so ordered to be delivered; or if the time for filing claims has expired and all claims are paid or sufficiently secured the court may so order distribution with or without bond as it may determine.

SEC. 1.4. Section 1004 of the Probate Code is amended to read:

1004.

When the time for filing or presenting claims has expired and all uncontested claims have been paid or are sufficiently secured by mortgage, or otherwise, but the estate is not in a condition to be finally closed and distributed, the executor or administrator to whom authority has been granted to administer the estate without court supervision, in accordance with Article 2 (commencing with Section 591) of Chapter 8 of Division 3, may petition the court for authority to distribute a

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portion of the estate to the person or persons entitled thereto. Such petition need not include an accounting, provided that when the petition seeks authority to distribute to a trustee the petition shall include an accounting unless the trustee consents to the distribution without an accounting. The total amount of the property distributed under this section shall not exceed 50 percent of the net value of the estate. The clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by Section 1200, but the court may order the notice to be given for a shorter period or dispensed with. If the court shall determine that all of the allegations of the petition are true, that the estate is but little indebted, * * * that the property to be distributed does not exceed 50 percent of the net value of the estate, and that the distribution may be made without loss or injury to the estate or any person interested therein, the court shall make an order authorizing the executor or administrator to distribute the property to the person or persons entitled thereto. For purposes of this section "net value of the estate" means the excess of the value of the assets of the estate reflected by all inventories and appraisements on file with the court over the total amount of all creditors' claims filed or presented and liens and encumbrances recorded or known to the executor or administrator not reflected in any creditors' claims filed or presented, excluding death tax liens occasioned by the decedent's death.

SEC. 1.5. Section 1024 of the Probate Code is amended to read:

1024.

Before any decree of distribution is made all personal property taxes due and payable by the estate shall be paid * * *.

SEC. 1.6. Section 1174 of the Probate Code is amended to read:

1174.

Such petition, or affidavits in support thereof, may be received in evidence and acted upon by the court with the same

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force and effect as if the petitioner or affiants were personally present and testified to the fact set forth, and the court may render judgment thereon establishing the fact of the death, which judgment shall be prima facie evidence of the fact of the death. The presumption established by this section is a presumption affecting the burden of producing evidence. * * *

SEC. 2. Section 13311 of the Revenue and Taxation Code is amended to read:

13311.

"Market value," in respect to property included in any transfer, means the market value of the property as of the date of the transferor's death, whether or not the transfer was made during the lifetime of the transferor.

SEC. 2.3. Section 13311.5 is added to the Revenue and Taxation Code, to read:

13311.5.

(a) Certain qualified real property shall be valued based on use in accordance with this section.

(1) If—

(A) The decedent was (at the time of his or her death) a citizen or resident of the United States, and

(B) The executor elects the application of this section for purposes of the tax imposed by this part, then, for purposes of this part, the value of qualified real property shall be its value for the use under which it qualifies, under subdivision (b), as qualified real property.

(2) The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed five hundred thousand dollars ($500,000).

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(b) Qualified real property is as follows:

(1) For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use, but only if—

(A) Fifty percent or more of the adjusted value of the clear market value of the estate consists of the adjusted value of real or personal property which—

(i) On the date of the decedent's death, was being used for a qualified use, and

(ii) Was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) Twenty-five percent or more of the adjusted value of the clear market value of the estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which—

(i) Such real property was owned by the decedent or a member of the decedent's family and used for a qualified use, and

(ii) There was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) Such real property is designated in the agreement referred to in paragraph (2) of subdivision (d).

(2) For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A) Use as a farm for farming purposes, or

(B) Use in a trade or business other than the trade or business of farming.

(3) For purposes of paragraph (1), the term "adjusted value" means—

(A) The value of the estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the estate, or

(B) In the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property for unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the estate.

(c) Tax treatment of dispositions and failures to use for a qualified use are as follows:

(1) If, within 15 years after the decedent's death and before the death of the qualified heir—

(A) The qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his or her family), or

(B) The qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent, then there is hereby imposed an additional tax.

(2) Amount of additional tax—

(A) The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

(i) The adjusted tax difference attributable to such interest, or

(ii) The excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's

length, the fair market value of the interest) over the value of the interest determined under subdivision (a).

(B) For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

(i) The excess of the value of such interest for purposes of this chapter (determined without regard to subdivision (a)) over the value of such interest determined under subdivision (a), bears to

(ii) A similar excess determined for all qualified real property.

(C) For purposes of subparagraph (B), the term "adjusted tax difference with respect to the estate" means the excess of what would have been the tax liability but for subdivision (a) over the tax liability. For purposes of this subparagraph, the term "tax liability" means the tax imposed by this part reduced by the credits allowable against such tax.

(D) For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

(i) The value determined under subdivision (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii) The adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subdivision with respect to all prior transactions involving portions of such interest.

(3) If the date of the disposition or cessation referred to in paragraph (1) occurs more than 120 months and less than 180 months after the date of the death of the decedent, the amount of the tax imposed by this subdivision shall be reduced (but not below zero) by an amount determined by multiplying the amount of such tax (determined without regard to this paragraph) by a fraction—

(A) The numerator of which is the number of full months after such death in excess of 120, and

(B) The denominator of which is 60.

(4) In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(5) The additional tax imposed by this subsection shall become due and payable on the day which is six months after the date of the disposition or cessation referred to in paragraph (1).

(6) The qualified heir shall be personally liable for the additional tax imposed by this subdivision with respect to his or her interest unless the heir has furnished a bond which meets the requirements of subdivision (e)(11).

(7) For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

(A) Such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subdivision (b), or

(B) During any period of eight years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating three years or more during which—

(i) In the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his or her family in the operation of the farm or other business, and

(ii) In the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his or her family in the operation of the farm or other business.

(d) Elections and agreements are as follows—

(1) The election under this section shall be made not later than the time prescribed by Section 14103 (including exten-

sions thereof), and shall be made in such manner as the Controller shall by regulations prescribe.

(2) The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subdivision (c) with respect to such property.

(e) For purposes of this section—

(1) The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his or her family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) The term "member of the family" means, with respect to any individual, only such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(3) In the case of real property which meets the requirements of subparagraph (C) of subdivision (b)(1), residential buildings and related improvements of such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) The term "farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) The term "farming purposes" means—

(A) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)(i) The planting, cultivating, caring for, or cutting of trees, or

(ii) The preparation (other than milling) of trees for market.

(6) Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of Section 1402(a) of the Internal Revenue Code (relating to net earnings from self-employment).

(7) Method of valuing farms as follows—

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

(i) The excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual state and local real estate taxes for such comparable land, by

(ii) The average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the five most recent calendar years ending before the date of the decedent's death.

The formula provided by subparagraph (A) shall not be used—

(i) Where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii) Where the executor elects to have the value of the farm for farming purposes determined under paragraph (8).

(8) In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors.

(B) The capitalization of the fair rental value of the land for farmland or closely held business purposes.

(C) Assessed land values in a state which provides a differential or use value assessment law for farmland or closely held business.

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) Such property is so considered under Section 1014(b) of the Internal Revenue Code (relating to basis of property acquired from a decedent),

(B) Such property is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary bequest, or

(C) Such property is acquired by any person from a trust in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest.

(10) If the decedent and his or her surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to

provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) If the qualified heir makes written application to the Controller for determination of the maximum amount of the additional tax which may be imposed by subdivision (c) with respect to the qualified heir's interest, the Controller (as soon as possible, and in any event within one year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subdivision (c) and shall be entitled to a receipt or writing showing such discharge.

(f) If qualified real property is disposed of or ceases to be used for a qualified use, then—

(1) The statutory period for the assessment of any additional tax under subdivision (c) attributable to such disposition or cessation shall not expire before the expiration of three years from the date the Controller is notified (in such manner as the Controller may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion to which an election under subdivision (h) applies, three years from the date the Controller is notified of the replacement of the converted property or of an intention not to replace); and

(2) Such additional tax may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(h) Special rules for involuntary conversion of qualified real property are as follows:

(1)(A) If there is an involuntary conversion of an interest in qualified real property and the qualified heir makes an election under this subdivision—

(i) No tax shall be imposed by subdivision (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii) If clause (i) does not apply, the amount of the tax imposed by subdivision (c) on such conversion shall be the amount determined under subparagraph (B).

(B) The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subdivision) would have been imposed on such conversion reduced by an amount which—

(i) Bears the same ratio to such tax, as

(ii) The cost of the qualified replacement property bears to the amount realized on the conversion.

(2) For purposes of subdivision (c)—

(A) Any qualified replacement property shall be treated in the same manner as it if were a portion of the interest in qualified real property which was involuntarily converted, except that with respect to such qualified replacement property—

(i) The 15-year period under paragraph (1) of subdivision (c) shall be extended by any period, beyond the two-year period referred to in Section 1033(a)(2)(B)(i) of the Internal Revenue Code, during which the qualified heir was allowed to replace the qualified real property, and

(ii) The phaseout period under paragraph (3) of subdivision (c) shall be appropriately adjusted to take into account the extension referred to in clause (i).

(B) Any tax imposed by subdivision (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) Paragraph (7) of subdivision (c) shall be applied—

(i) By not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii) By treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) For purposes of this subdivision—

(A) "Involuntary conversion" means a compulsory or involuntary conversion within the meaning of Section 1033 of the Internal Revenue Code.

(B) The term "qualified replacement property" means—

(i) In the case of an involuntary conversion described in Section 1033(a)(1) of the Internal Revenue Code, any real property into which the qualified real property is converted, or

(ii) In the case of an involuntary conversion described in Section 1033(a)(2) of the Internal Revenue Code, any real property purchased by the qualified heir during the period specified in Section 1033(a)(2)(B) of the Internal Revenue Code for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subdivision (b)(2) under which the qualified real property qualified under subdivision (a).

(4) The rules of the last sentence of Section 1033(a)(2)(A) of the Internal Revenue Code shall apply for purposes of paragraph (3)(b)(ii).

(5) Any election under this subdivision shall be made at such time and in such manner as the Controller may by regulations prescribe.

SEC. 2.5. Section 13314 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 13551 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 13552.5 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 13554 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 13554.5 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 13555 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 13556 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 13556.5 of the Revenue and Taxation Code is repealed.

SEC. 10. Section 13557 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 13801 of the Revenue and Taxation Code is amended to read:

13801.

(a) Property of the clear market value of * * * forty thousand dollars * * * ($40,000) transferred to * * * a minor child of the decedent is exempt from the tax imposed by this part.

(b) Property of the clear market value of * * * an amount equal to ten thousand dollars * * * ($10,000) multiplied by the excess of 21 over the age (in years) of a child of the decedent who is under the age of 18 at the date of death of the decedent, provided the decedent does not have a surviving spouse and that such child, immediately after the death of the decedent, has no known parent, is exempt from the tax imposed by this part. * * *

(c) * * * Property of the clear market value of * * * twenty thousand dollars * * * ($20,000) transferred to any other class A transferee, other than the spouse of the decedent, is exempt from the tax imposed by this part.

SEC. 12. Section 13802 of the Revenue and Taxation Code is amended to read:

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13802.

Property of the clear market value of * * * ten thousand dollars * * * ($10,000) transferred to any class B transferee is exempt from the tax imposed by this part.

SEC. 13. Section 13803 of the Revenue and Taxation Code is amended to read:

13803.

Property of the clear market value of three * * * thousand dollars * * * ($3,000) transferred to any class C transferee is exempt from the tax imposed by this part.

SEC. 15. Section 13805 of the Revenue and Taxation Code is amended to read:

13805.

* * * None of the property transferred to the spouse of the decedent is subject to this part, except that if a limited power of appointment over any portion or all of the decedent's property is given to the spouse of the decedent, the value of such property is subject to this part; provided, however, that the value of any interest, other than the power itself, given to the spouse of the decedent in such property is not subject to this part.

SEC. 15.2. Section 14104 of the Revenue and Taxation Code is amended to read:

14104.

Every tax imposed by this part shall be paid to the * * * Controller by remittance payable to the State Treasurer.

SEC. 15.3. Section 14128 of the Revenue and Taxation Code is amended to read:

14128.

Within 30 days after the date of the deduction or collection of a tax by him or her, the executor, administrator, or trustee shall pay the tax to the * * * Controller by remittance payable to the State Treasurer.

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SEC. 15.4. Section 14141 of the Revenue and Taxation Code is repealed.

SEC. 15.5. Section 14142 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 14143 of the Revenue and Taxation Code is repealed.

SEC. 16.5. Section 14143.5 of the Revenue and Taxation Code is amended to read:

14143.5.

If the Controller finds that payment of any tax imposed by this part * * * would result in undue hardship to the estate, he may enter into a written agreement for payment of the tax with the executor, administrator, trustee or transferee liable for its payment upon such terms and conditions as the Controller in his discretion may provide, and provided that the Controller finds that payment of the tax plus interest due thereon is adequately secured.

Undue hardship shall include, but not be limited to, the hardship resulting from the payment of taxes imposed pursuant to the provisions of this part on class A or class B beneficiaries on a qualified family property, and shall include the inability to secure a loan against such qualified property at a rate of interest at the rate specified in subdivision (b) of Section 14211 or less or the necessity for selling an interest in a family business to unrelated persons. * * *

SEC. 16.7. Section 14144 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 14180 is added to the Revenue and Taxation Code, to read:

14180.

The Controller may, for reasonable cause, provided that the Controller finds that payment of the tax plus interest is adequately secured, extend the time for payment of any part of the amount determined as the tax imposed by this part, or any

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part of any installment under Section 14105, 14181, or 14182 for a reasonable period not in excess of 10 years from the date prescribed by Section 14103 for payment of the tax or, in the case of an installment amount referred to in this section, if later, not beyond the date which is 12 months after the due date for the last installment.

For purposes of this section, "reasonable cause" includes the circumstances of a taxpayer who is a beneficiary of some or all of the decedent's works of art, if the decedent is an artist and if the value of an interest in works in art created by such decedent artist which is included in determining the gross estate of a decedent artist exceeds:

(a) Thirty-five percent of the value of the gross estate of such decedent artist, or

(b) Fifty percent of the taxable estate of such decedent artist.

For purposes of this paragraph, "works of art" are defined pursuant to paragraph (1) of subdivision (a) of Section 217, and an "artist" is an individual who creates such "works of art."

SEC. 18. Section 14181 is added to the Revenue and Taxation Code, to read:

14181.

(a)(1) If the value of an interest in a closely held business which is included in determining the market value of the estate of a decedent who was (at the date of his or her death) a citizen or resident of the United States exceeds 65 percent of the clear market value of the estate, the executor may elect to pay part or all of the tax imposed by this part in two or more (but not exceeding 10) equal installments.

(2) The maximum amount of tax which may be paid in installments under this subdivision shall be an amount which bears the same ratio to the tax imposed by this part (reduced by the credits against such tax) as—

(A) The closely held business amount, bears to

(B) The amount of the clear market value of the estate.

(3) If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than five years after the date prescribed by Section 14103, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this paragraph for payment of the preceding installment.

(4) No election may be made under this section by the executor of the estate of any decedent if an election under Section 14182 applies with respect to the estate of such decedent.

(b)(1) For purposes of this section, "interest in a closely held business" means any of the following:

(A) An interest as a proprietor in a trade or business carried on as a proprietorship.

(B) An interest as a partner in a partnership carrying on a trade or business, if either of the following applies:

(i) Twenty percent or more of the total capital interest in such partnership is included in determining the market value of the estate of the decedent.

(ii) Such partnership had 15 or fewer partners.

(C) Stock in a corporation carrying on a trade or business if either of the following applies:

(i) Twenty percent or more in value of the voting stock of such corporation is included in determining the market value of the estate of the decedent.

(ii) Such corporation had 15 or fewer shareholders.

(2) For purposes of paragraph (1):

(A) Determinations shall be made as of the time immediately before the decedent's death.

(B) Stock or a partnership interest which—

(i) Is community property of a husband and wife (or the income from which is community income), or

(ii) Is held by a husband and wife as joint tenants, or tenants in common, shall be treated as owned by one shareholder or one partner, as the case may be.

(C) Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

(D) All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of Section 267(c)(4) of the Internal Revenue Code) shall be treated as owned by the decedent.

(3) For purposes of the 65-percent requirement of paragraph (1) of subdivision (a), an interest in a closely held business which is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by such owner or lessee for purposes of operating or maintaining the farm.

(4) For purposes of this section, value shall be value determined for purposes of this part.

(5) For purposes of this section, "closely held business amount" means the value of the interest in a closely held business which qualifies under subdivision (a)(1).

(6) (A) If the executor elects the benefits of this paragraph (at such time and in such manner as the Controller shall by regulations prescribe), then—

(i) For purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subdivision (c), any capital interest in a partnership and any nonreadily tradable stock which (after the application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the market value of the decedent's estate, and

(ii) The executor shall be treated as having selected under subsection (a)(3) the date prescribed by Section 14103.

(B) For purposes of this paragraph, the term "nonreadily tradable stock" means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market.

(c) For purposes of this section, interests in two or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 20 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 20-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants or tenants in common shall be treated as having been included in determining the value of the market value of the decedent's estate.

(d) Any election under subdivision (a) shall be made not later than the time prescribed by Section 14103. If an election under subdivision (a) is made, the provisions of this chapter shall apply as though the Controller were extending the time for payment of the tax.

(e) If an election is made under subdivision (a) to pay any part of the tax imposed by this part in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by paragraph (2) of subdivision (a)) be prorated to the installments payable under subdivision (a). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Controller. This subdivision shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(f) If the time for payment of any amount of tax has been extended under this section—

(1) Interest payable under Section 14211 on any unpaid portion of such amount attributable to the first five years after the date prescribed by Section 14103 shall be paid annually.

(2) Interest payable under Section 14211 on any unpaid portion of such amount attributable to any period after the 5-year period referred to in paragraph (1) shall be paid annually at the same time as, and as a part of, each installment payment of the tax.

(3) In the case of a deficiency to which subdivision (e) applies which is assessed after the close of the 5-year period referred to in paragraph (1), interest attributable to such 5-year period, and interest assigned under paragraph (2) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Controller.

(4) If the executor has selected a period shorter than five years under paragraph (3) of subdivision (a), such shorter period shall be substituted for five years in paragraphs (1), (2), and (3) of this subdivision.

(g)(1)(A) If—

(i) One-third or more in value of an interest in a closely held business which qualifies under paragraph (1) of subdivision (a) is distributed, sold, exchanged, or otherwise disposed of, or

(ii) Aggregate withdrawals of money and other property from the trade or busines, an interest in which qualifies under paragraph (1) of subdivision (a), made with respect to such interest, equal or exceed one-third of the value of such trade or business,

then the extension of time for payment of tax provided in subdivision (a) shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Controller.

(B) In the case of a distribution in redemption of stock to which Section 303 of the Internal Revenue Code (or so much of Section 304 of the Internal Revenue Code as relates to Section 303) applies—

(i) Subparagraph (A)(i) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed, and

(ii) Subparagraph (A)(ii) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

This subparagraph shall apply only if, on or before the date prescribed by paragraph (3) of subdivision (a) for the payment of the first installment which becomes due after the date of the distribution (or, if earlier, on or before the day which is one year after the date of the distribution), there is paid an amount of the tax imposed by this part not less than the amount of money and other property distributed.

(C) Subparagraph (A)(i) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of Section 368(a)(1) of the Internal Revenue Code nor to an exchange to which Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as relates to Section 355) applies; but any stock received in such an exchange shall be treated for purposes of subparagraph (A)(i) as an interest qualifying under paragraph (1) of subdivision (a).

(D) Subparagraph (A)(i) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent.

(2)(A) If an election is made under this section and the estate has undistributed net income for any taxable year ending on or after the due date for the first installment, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable

year (as defined in Section 643 of the Internal Revenue Code) exceeds the sum of all of the following:

(i) The amounts for such taxable year specified in paragraphs (1) and (2) of Section 661(a) of the Internal Revenue Code (relating to deduction for distributions, etc.).

(ii) The amount of California and federal income taxes imposed for the taxable year on the estate;

(iii) The amount of the tax imposed by this part (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph); and

(iv) The amount of federal estate tax (including interest) paid by the executor during the taxable year.

(3) If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Controller.

(h)(1) If—

(A) A deficiency in the tax imposed by this part is assessed,

(B) The estate qualifies under paragraph (1) of subdivision (a), and

(C) The executor has not made an election under subdivision (a), the executor may elect to pay the deficiency in installments. This subdivision shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) An election under this subdivision shall be made not later than 60 days after issuance of notice and demand by the Controller for the payment of the deficiency, and shall be made in such manner as the Controller shall by regulations prescribe.

(3) If an election is made under this subdivision, the deficiency shall (subject to the limitation provided by para-

graph (2) of subdivision (a)) be prorated to the installments which would have been due if an election had been timely made under subdivision (a).

The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subdivision. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(i) The Controller shall prescribe such regulations as may be necessary to the application of this section.

SEC. 19. Section 14182 is added to the Revenue and Taxation Code, to read:

14182.

(a) If the value of an interest in a closely held business which is included in determining the market value of the estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

(1) Thirty-five percent of the market value of the estate of such decedent, or

(2) Fifty percent of the clear market value of the estate of such decedent, the executor may elect to pay part or all of the tax imposed by this part in two or more (but not exceeding 10) equal installments. Any such election shall be made no later than the time prescribed by Section 14103, and payment shall be made in such manner as the Controller shall by regulations prescribe. If an election under this section is made, the provisions of this chapter shall apply as though the Controller were extending the time for payment of the tax.

(b) The maximum amount of tax which may be paid in installments as provided in this section shall be an amount which bears the same ratio to the tax imposed by this part (reduced by the credits against such tax) as the value of the interest in a closely held business which qualifies under subdivision (a) bears to the market value of the estate.

(c) For purposes of this section, the term "interest in a closely held business" means any of the following:

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business, if either of the following applies:

(A) Twenty percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent.

(B) Such partnership had 10 or less partners.

(3) Stock in a corporation carrying on a trade or business, if either of the following applies:

(A) Twenty percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent.

(B) Such corporation had 10 or less shareholders.

For purposes of this subdivision, determinations shall be made as of the time immediately before the decedent's death.

(d) For purposes of subdivisions (a), (b), and (h)(1), interests in two or more closely held businesses, with respect to each of which there is included in determining the market value of the decedent's estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the market value of the decedent's estate.

(e) If an election is made under subdivision (a), the first installment shall be paid on or before the date prescribed by Section 14103 for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subdivision for payment of the preceding installment.

(f) If an election is made under subdivision (a) to pay any part of the tax imposed by this part in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subdivision (b)) be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Controller. This subdivision shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(g) If the time for payment of any amount of tax has been extended under this section, interest payable under Section 14211 on any unpaid portion of such amount shall be paid annually at the same time as, and as part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Controller.

(h)(1)(A) If—

(i) Aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subdivision (a), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

(ii) Fifty percent or more in value of an interest in a closely held business which qualifies under subdivision (a) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in this section shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Controller.

(B) In the case of a distribution in redemption of stock to which Section 303 of the Internal Revenue Code (or so much of Section 304 of the Internal Revenue Code as relates to Section 303) applies—

(i) Subparagraph (A)(i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

(ii) Subparagraph (A)(ii) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subdivision (e) for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by this part not less than the amount of money and other property distributed.

(C) Subparagraph (A)(ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of Section 368(a)(1) of the Internal Revenue Code nor to an exchange to which Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as relates to Section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subdivision (a).

(D) Subparagraph (A)(ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decedent's will or under the applicable law of descent and distribution.

(2)(A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date

prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income fo the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in Section 643 of the Internal Revenue Code) exceeds the sum of all of the following:

(i) The amounts for such taxable year specified in paragraphs (1) and (2) of Section 661(a) of the Internal Revenue Code (relating to deduction for distributions, etc.).

(ii) The amount of California and federal income taxes imposed for the taxable year on the estate.

(iii) The amount of the tax imposed by this part (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(iv) The amount of federal estate tax (including interest) paid by the executor during the taxable year.

(3) If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Controller.

(i)(1) If—

(A) A deficiency in the tax imposed by this part is assessed after the date of the enactment of this section, and

(B) The estate qualifies under paragraph (1) or (2) of subdivision (a),

the executor may elect to pay the deficiency in installments. This subdivision shall not apply if the deficiency is due to negligence, to Intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) An election under this subdivision shall be made not later than 60 days after the issuance of notice and demand by the Controller for the payment of the deficiency.

(3) If an election is made under this subdivision, the deficiency shall (subject to the limitation provided by subdivision (b)) be prorated to the installments which would have been due if an election had been timely made under this section at the time the estate tax return was filed.

The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subdivision. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(j) The Controller shall prescribe such regulations as may be necessary to the application of this section.

SEC. 20. Section 14211 of the Revenue and Taxation Code is amended to read:

14211.

(a) The tax does not bear interest if it is paid prior to the date on which it otherwise becomes delinquent. However, if it is paid after that date it bears interest at the rate of 12 percent per annum from the date it became delinquent and until it is paid or, in the case of any tax being paid in installments pursuant to Section 14105, * * * 14143.5, 14181, or 14182, at the adjusted rate of interest provided in subdivision (b) of this section or at 12 percent per annum, whichever is lower, until the date prescribed for payment of such installment, and thereafter at the rate of 12 percent per annum.

(b) The initial adjusted rate of interest shall be 11 percent per annum. The Controller shall establish an adjusted rate of interest for the purpose of this section not later than October 15 of any year if the adjusted prime rate charged by banks (that being 90 percent of the average predominate rate quoted by

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commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System) during September of that year, rounded to the nearest full percent, is at least a full percentage point more or less than the adjusted rate of interest which is then in effect. Any such adjusted rate of interest shall be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent, and shall become effective on February 1 of the immediately succeeding year. Any adjustment provided for under this * * * subdivision may not be made prior to the expiration of 23 months following the date of any preceding adjustment under this * * * subdivision which changes the rate of interest.

SEC. 21. Section 14342 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 14343 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 14344 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 14345 of the Revenue and Taxation Code is amended to read:

14345.

No * * * trust company, corporation, bank, other institution, or person in possession, control, custody, partial control, or partial custody of any securities, deposits, or other property, including shares of the capital stock of or other interest in any such organization or institution, belonging to or standing in the name of a decedent, whether resident or nonresident, shall deliver or transfer any such property to or upon the order or request of any executor of the will, administrator of the estate, legatee or heir of the decedent; nor deliver or transfer any such property to or upon the order of any agent, deputy, attorney, trustee or successor in interest of the decedent after receipt of actual notice of the death of the decedent; nor deliver or transfer any securities or other property, including any shares of the capital stock or other interest in any such organization or institution, standing in the joint names of the

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decedent and one or more other persons, to or upon the order or request of such other person or persons after receipt of actual notice of the death of the decedent; and no bank or other institution having custody of any deposit standing in the joint names of a decedent and any other person or persons or standing in the name of the decedent subject to the right of any other person or persons to draw upon or withdraw the same shall pay or deliver such deposit to or upon the order of such other person or persons after receipt of actual notice of the death of the decedent by the officer or manager in charge of the office or branch of such bank or other institution at which such deposit is carried or by the employee thereof who pays or delivers said deposit:

(a) Without retaining a sufficient portion or amount of the property to pay any tax and interest which may thereafter be assessed pursuant to this part; and

(b) Without first giving notice of the time and place of the delivery or transfer to the Controller and county treasurer at least 10 days prior to the delivery or transfer.

The Controller, or any person authorized in writing by the Controller, may consent in writing to the delivery or transfer, in which event compliance with this section is not required.

The Controller or his or her authorized agent may examine any property specified in this section at the time of its delivery or at any other time.

SEC. 25. Section 14346 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 14347 of the Revenue and Taxation Code is amended to read:

14347.

Any * * * trust company, corporation, bank, other institution, or person required to comply with the provisions of this article but failing to do so is liable to the state for the amount of any tax, interest or penalty due and payable under this part on the transfer of the property involved, if solely by reason of such transfer or payment the state is unable to recover the same.

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The liabilities imposed by this section may be enforced by the Controller in an action brought in any court of competent jurisdiction.

SEC. 27. Section 14774 of the Revenue and Taxation Code is amended to read:

14774.

For the services performed by him or her pursuant to this part, the inheritance tax referee shall be paid out of the Inheritance Tax * * * Fund:

(a) Such reasonable compensation as the * * * Controller shall fix.

(b) Such actual and necessary traveling and other incidental expenses, including fees paid to witnesses subpoenaed by him or her, as the * * * Controller shall allow.

No payment shall be made unless the claim for payment is first approved by the Controller.

Any payment under this section is in addition to any other payment to the referee pursuant to Section 609 of the Probate Code.

SEC. 28. Section 14791 of the Revenue and Taxation Code is repealed.

SEC. 29. Section 14792 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 14793 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 14794 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 14795 of the Revenue and Taxation Code is repealed.

SEC. 33. Section 14798 of the Revenue and Taxation Code is repealed.

SEC. 34. Section 14902 of the Revenue and Taxation Code is amended to read:

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14902.

The money in the Inheritance Tax Fund is hereby appropriated as follows:

(a) To pay the refunds authorized by this part and by Part 9.5 (commencing with Section 16700) of this division.

(b) To pay the compensation and expenses of the referee referred to in Section 14774.

(c) the balance of the money in the fund shall, on order of the Controller, be transferred to the State General Fund.

SEC. 35. Section 15104.5 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 15301 of the Revenue and Taxation Code is repealed.

SEC. 38. Section 15301.5 of the Revenue and Taxation Code is repealed.

SEC. 39. Section 15303.5 of the Revenue and Taxation Code is repealed.

SEC. 40. Section 15310 of the Revenue and Taxation Code is amended to read:

15310.

* * * In the case of a transfer to either spouse by the other, none of the property transferred is subject to this part, except that if a limited power of appointment over any portion or all of the donor's property is given to the donor's spouse, the value of such property is subject to this part; provided, however, that the value of any interest, other than the power itself, given to the donor's spouse in such property is not subject to this part.

SEC. 41. Section 15421 of the Revenue and Taxation Code is amended to read:

15421.

Property of the clear market value of * * * forty thousand dollars * * * ($40,000) transferred to a minor child of the donor, and of * * * twenty thousand dollars * * * ($20,000) transferred to any other class A donee, other than the spouse of the donor, is exempt from the tax imposed by this part.

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SEC. 42. Section 15422 of the Revenue and Taxation Code is amended to read:

15422.

Property of the clear market value of * * * ten thousand dollars * * * ($10,000) transferred to any class B donee is exempt from the tax imposed by this part.

SEC. 43. Section 15423 of the Revenue and Taxation Code is amended to read:

15423.

Property of the clear market value of three * * * thousand dollars * * * ($3,000) transferred to any class C donee is exempt from the tax imposed by this part.

SEC. 45. The sum of four hundred thousand dollars ($400,000) is hereby appropriated to the Controller for the purpose of administering this act.

SEC. 46. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act with respect to the computation of inheritance taxes shall apply only to the estates of decedents dying on and after January 1, 1981, and with respect to the computation of gift taxes, shall apply only to gifts made on and after January 1, 1981. All other provisions of this act relating to probate procedure and tax administration and collection, shall apply to all estates, effective January 1, 1981.

Approved July 19, 1980.

Filed July 20, 1980.

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